

II. THE 35 U.S.C. § 103(a) REJECTION SHOULD BE WITHDRAWN

The Examiner has rejected claims 1, 2, and 8 under 35 U.S.C. § 103(a) as being obvious over Sigl. To establish obviousness of a claim under 35 U.S.C. § 103(a) the Office must demonstrate that *all the claim limitations are taught or suggested* by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Further, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

The rejection of independent claim 1 should be withdrawn because Sigl, the only prior art cited in the Office Action, does not teach or suggest all the claim limitations of claim 1. Claim 1 recites "[a] method for controlling a vehicle comprising . . . *detecting whether the vehicle is traveling on a descent*." The Sigl reference simply does not *detect* whether the vehicle is traveling on a descent. The sections of Sigl cited in the Office Action as teaching detection of a descent instead merely indicate that "it is only in a few operating states, *such as* when driving on downhill grades, that the adjusted speed is exceeded." (Col. 3, lines 21 to 23; emphasis added). The Sigl reference merely lists a downhill grade as an *example* of a situation in which the adjusted speed is exceeded. The cited sections of the Sigl reference simply do not teach or suggest *detecting* a descent; instead, Sigl merely describes the effect of driving on downhill grades. Therefore, the Sigl reference cannot render obvious claim 1 of the present invention in which *a descent is detected* as part of the method.

The above conclusion is particularly inescapable in light of the additional feature of the present invention of "calculating at least one manipulated variable based on the actual speed and the setpoint speed *only when the vehicle is detected as traveling on the descent*," as recited in claim 1. There is no teaching or suggestion in Sigl with respect to calculating a manipulated variable *only* when a descent is detected. In fact, as noted above, there is no provision in Sigl with respect to detecting a descent, and so it is impossible for the Sigl reference to suggest calculating a variable *only* when a descent is detected. Therefore, the Sigl reference does not teach or suggest the features of the present invention as recited in claim 1. Accordingly, it is respectfully submitted that Sigl cannot render obvious claim 1 for the foregoing reasons, and it is respectfully submitted that claim 1 is allowable.

Additionally, it is respectfully submitted that there is no suggestion in the prior art to modify the Sigl reference by detecting a descent in the manner contemplated by claim 1.

The Examiner asserts in the Office Action that Sigl:

performs some functions when the vehicle is traveling on a downhill.
Therefore, Sigl detects when the vehicle is traveling on a descent. It can be read between the lines.

(Office Action at page 2). However, Sigl does not indicate *detecting* a descent. In fact, measuring devices 20 through 22 in Sigl measure "throttle-valve position, engine temperature, engine rpm, driving speed, etc." (Col. 2, lines 63 to 64). Nowhere does Sigl indicate a sensor for detecting a descent or a method for detecting a descent from the sensors provided. Rather, Sigl merely indicates driving on downhill grades as *an example* of an operating state in which the device according to Sigl might operate. The conclusory reasoning of the Office Action suggesting the modification of the reference is insufficient to sustain an obviousness rejection, and therefore the § 103(a) rejection of claim 1 should be withdrawn.

Claim 2 depends from claim 1, and therefore claim 2 is allowable for at least the same reasons as claim 1 is allowable. Additionally, dependent claims 3 to 7, all of which have been indicated as containing allowable subject matter and ultimately depend on claim 1, are also allowable in their present form.

With respect to claim 8, Sigl does not teach or suggest all the limitations, and therefore does not render obvious claim 8 under 35 U.S.C. § 103(a). Amended claim 8 recites:

[a] device for controlling a vehicle, comprising . . . an output arrangement via which a manipulated variable that influences the actual speed of the vehicle is output . . . wherein the control device includes an enabling arrangement for enabling only the manipulated variable to be calculated and output, respectively, *if a descent of the vehicle has been detected*; and wherein the control device includes *an arrangement for detecting the descent of the vehicle*.

(Emphasis added). As noted above with respect to a comparable feature of claim 1, Sigl does not teach or suggest the feature of "enabling only the manipulated variable to be calculated and output, respectively, *if a descent of the vehicle has been detected*," as recited in claim 8. The cited sections of Sigl do not teach sensing a descent situation, and therefore Sigl cannot

teach *calculating and outputting the manipulated variable only if a descent of the vehicle is detected*.

Additionally, amended claim 8 recites specific structure for detecting a descent in the additional limitation that "the control device includes an arrangement for detecting the descent of the vehicle." A control device which includes an arrangement for detecting the descent of the vehicle is not taught or suggested in the Sigl reference. The discussion above arguing against the Office Action's suggestion that the device according to Sigl detects a descent, as read "between the lines," applies equally to amended claim 8. Since the Sigl reference does not teach or suggest all of the limitations of claim 8, it is respectfully submitted that the Sigl reference does not render obvious the subject matter of claim 8. Accordingly, it is respectfully submitted that claim 8 is allowable.

Additionally, claim 9, which has been indicated as containing allowable subject matter and depends from claim 8, is also allowable in its present form. Claim 10 depends from claim 8, and therefore is allowable in its present form for at least the same reasons as amended claim 8 is allowable.

III. CONCLUSION

In view of all of the above, it is believed that the rejections of claims 1, 2, and 8 have been obviated, and that all of claims 1 to 10 are allowable. It is therefore respectfully requested that the rejections be withdrawn and that the present application issue as early as possible.

Respectfully Submitted,

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